



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2301211
Applicant Name : Dan Nickel
Address of Proposal: 309 NW 39th Street

SUMMARY OF PROPOSED ACTION

Master Use Permit to dredge 142 cubic yards from the Lake Washington Ship Canal adjacent to Lakeside Industries, a sand and gravel operation.

The following approvals are required:

Shoreline Substantial Development Permit – (SMC Chapter 23.60)

- **SEPA - Environmental Determination** - (SMC Chapter 25.05)

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading or demolition or
involving another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The subject site is located at 309 NW 39th Street on the north side of the Lake Washington Ship Canal and is zoned Industrial General-1 (IG2-U65'), with a 65 ft. height limit and has a shoreline environment designation of Urban Industrial (UI) for the dry land and Conservancy Navigation for the submerged land. The Lake Washington Ship Canal flows through the Ballard Locks into Salmon Bay and then the Puget Sound. The site is approximately 410 feet in length at the shoreline. A steel sheet-pile bulkhead of varying heights runs the length of the site, and several large logs are cabled to this bulkhead to function as boat bumpers. A wood deck, located approximately 110 feet from the western property line, overhangs the steel bulkhead. This deck is supported by wood piles 12 inches or greater in diameter. There are six dolphin structures located in the water along the shoreline. The site is used to receive and distribute sand and gravel. Trucks distribute materials from the site. There are 12 small buildings located on the property, which are used for storage and office space. There are structures associated with the transportation and storage of sand and gravels (e.g. overhead conveyor system, scales, overhead hopper) and several steel piles used to moor barges. A hopper and grated boat ramp are located along the shoreline at the approximate midpoint of the property. The boat ramp is lowered only when a barge is present. There are several large sand and gravel piles located in the western half of the property.

Adjacent properties include a metal fabrication company, warehouses, street right of ways and the Lake Washington Ship Canal. The surrounding uses include other industrial activities and warehouse and service buildings.

Proposal Description

The applicant proposes to dredge approximately 142 cubic yards (cy³) of accumulated sand and gravel from the submerged land or nearshore area adjacent to their property. The purpose of the project is to restore the berthing area to a depth of - 12 ft. The removal activity will be limited to area extending from 75 feet east of the eastern edge of the hopper assembly to 115 feet west of the western edge of the hopper assembly.

Dredge material will be placed on-site, above the ordinary high water mark (OHWM) for future use by Lakeside Industries. Best management practices will be utilized to prevent silt-laden water entrained in those dredged spoils to enter back into the Lake Washington Ship Canal. However, minor amounts of silt-laden water, which may not be captured by protective barriers (described below), may enter the ship canal.

Straw bales will be placed between OHWM and the onsite spoils stockpile location, with sheets of filter fabric covering the stockpile side of the bales and extending landward beneath the leading edge of the stockpile. This measure will reduce the return of silt-laden water into surface waters by promoting infiltration and evaporation.

Proposed mitigation will include the following:

- No construction activities will take place between 16 April and 30 September in order to minimize impacts on migrating salmonids.
- A sedimentation control curtain will be installed around the work area waterward of OHWM. The upper hem will consist of floatation material, and the lower hem will either consist of ballast material or be anchored to the substrate with rock placed by a diver.
- During dredging, the clamshell operator will use the appropriate operational controls to minimize the suspension of sediment, such as increasing cycle time (reducing velocity during decent and ascent) and eliminating multiple “bites.”
- The barge or workboat will not be allowed to ground during the proposed work.
- All material shall be stored on the barge until it is properly placed on land in such a manner that it cannot enter into the waterway or cause water quality degradation (Section 13, Rivers and Harbors Act).

There are no expected environmental health hazards associated with this project. Known contaminants in Lake Washington Ship Canal sediment include dieldrin, polycyclic aromatic hydrocarbons (PAHs), polycyclic chlorinated biphenyls (PCBs), and heavy metals. However, it is believed that materials to be dredged are relatively free of such contaminants. The only possibility of construction-related spill would be from diesel fuel while re-fueling the crane.

Public and Agency Comments

No public comments were received during the public comment period, which ended on June 13, 2003.

ANALYSIS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC.*

A. RCW Chapter 90.58

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be

designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, The City of Seattle and other jurisdictions with shorelines, adopted a local shoreline master program that was codified in the Seattle Municipal Code Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions.

The proposed dredging activity has been designed and mitigated to ensure minimum impact to the public health, land, and the waters of the state, and their aquatic life. The location of the dredging will not interfere with the public rights of navigation and corollary rights, thus providing for the management of the shorelines by planning for and fostering all reasonable and appropriate uses. Therefore, the subject application is consistent with the policies and procedures outlined in RCW 90.58.

SSMP Chapter 23.60

Chapter 23.60 of the Seattle Municipal Code is known as the "Seattle Shoreline Master Program". In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SSMP 23.60.030. Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SSMP 23.60.064).

The proposal is subject to the Shoreline Policies of the Seattle Shoreline Management Program (SSMP 23.60.004), because the site is located within the shoreline district and the proposal requires a shoreline permit. Additionally, the applicant must show that the proposal meets the criteria and development standards for the shoreline environment in which the site is located (Urban Industrial and Conservancy Navigation); any applicable special approval criteria; general development standards; and the development standards for specific uses.

SMC 23.60.152 - General Development Standards

These general development standards apply to all uses in the shoreline environment. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses must, in part:

- 1) minimize and control any increases in surface water runoff so that receiving water quality and shore properties are not adversely affected;
- 2) control erosion during project construction and operation;
- 3) be located, designed, constructed, and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas, including but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.
- 4) be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.
- 5) be designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area;
- 6) be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization landfills, levees, dikes, groins, jetties, or substantial site regrades.

The proposed dredging, as conditioned, including the proposed mitigation, is consistent with these general standards for development within the shoreline area, thereby minimizing any adverse impact to the shoreline environment, to water quality, to the natural shoreline processes, and the surrounding land and water uses.

SMC 23.60.182 Dredging standards.

The proposed dredging meets the dredging development standards because the project is designed to include reasonable mitigating measures to protect aquatic habitats and to minimize adverse impacts such as turbidity, release of nutrients, heavy metals, sulfides, organic materials or toxic substances, dissolved oxygen depletion, disruption of food chains, loss of benthic productivity and disturbance of fish runs and important biological communities.

Measures proposed by the project proponent to mitigate impacts to aquatic life include the planting of native vegetation along shoreline in the street end that is northerly and adjacent to the project site. The applicant leases this street end from SDOT. This measure will provide terrestrial input in the form of insects and detritus and will mitigate for the lost benthic life caused by the dredging activity.

The material that is being dredged will be re-used by the applicant because the majority of the dredged material is anticipated to consist of sand and gravel that has spilled into the water during the off-loading

of barges. This material will be recovered and re-used at the site. If a portion of the material dredged cannot be re-used, this material will be disposed of at an upland facility approved by the Environmental Protection Agency (EPA) and the Director of the Seattle/King County Department of Public Health, or any successor agency.

The dredging activity will take place between October 1st and April 15th (as prescribed by state and federal requirements) to minimize interference with migrating aquatic life.

SMC 23.60.220, 23.60.244 and 23.60.270 - Purpose of, Uses, and Development Standards for the Conservancy Navigation Environment

The purpose of the Conservancy Navigation is to preserve open water for navigation. Dredging is allowed in the CN environment to provide access to a water-dependent or water-related use. Lakeside Industries is a sand and gravel company, sand and gravel companies, by definition are water-related activities. Therefore the proposed project meets the use requirement for the CN environment. Additionally the project, as designed does not interfere with navigation therefore it meets the development standards for the CN environment.

SMC 23.60.220, 23.60.840 and 23.60.870 through 23.60.882 – Purpose of, Uses and Development Standards for Urban Industrial (UI) Environment

The purpose of the Urban Industrial environment is to provide for efficient use of industrial shorelines by major cargo facilities and other water-dependent and water-related industrial uses. Views shall be secondary to industrial development and public access shall be provided mainly on public lands or in conformance with an area-wide Public Access Plan.

All development must conform to the development standards in the UI shoreline environment. The proposal meets the development standards of the UI environment because there is no development or changes proposed in the UI environment at this site. The proposed work is dredging and all dredging will take place in the CN environment. The dredged material will be transferred to the UI designated portion of the site and will be re-used by the applicant at the site. The site is used for sand and gravel operations, which is considered a manufacturing use and is allowed in this shoreline environment. There are no proposed changes of the use at this site.

WAC Chapter 173-27

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

Conclusion

Development requiring a Shoreline Substantial Development Permit can only be approved if it conforms with the policies and procedures of the WAC, RCW and with the regulations of Chapter 23.60, Seattle Shoreline Master Program (SSMP).

The project, as proposed, meets the specific standards for development in the Urban Industrial environment. It also conforms to the general development standards and the specific dredging standards, as well as the requirements of the underlying zone, and therefore should be approved.

Pursuant to the Director's authority under Seattle's Shoreline Master Program, to ensure that development proposals are consistent with the policies and procedures, and conforms with specific development standards of the underlying zone and activity type, and having established that the proposed use and development are consistent with the Seattle Shoreline Program, the proposal may be approved.

DECISION – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The proposed action is **Conditionally GRANTED**. See conditions at the end of this decision.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the SEPA environmental checklist dated April 2003, the JARPA dated February 2003 and the Biological Evaluation dated January 2003. The information in the SEPA checklist, the JARPA, the Biological Evaluation and the experience of the lead agency with review of similar projects form the basis for this analysis and decision. The potential environmental impacts identified in the SEPA checklist, JARPA, and Biological Evaluation are discussed below where mitigation under Seattle's SEPA Ordinance is warranted.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part: "Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation," subject to some limitations. Under such limitations/circumstances (SMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-Term Impacts

Dredging Impacts

Dredging activities could result in adverse impacts. These impacts will be discussed in the construction impact section below.

Construction Impacts

The SEPA Overview Policy (SMC 25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675B) allow the reviewing agency to mitigate impacts associated with construction activities.

The following temporary or construction-related impacts are expected: limited localized erosion of the bottom sediments; water degradation including an increase in turbidity, disturbance of the aquatic environment and displacement of some fish wildlife species due to increased water turbidity levels, a decrease in dissolved oxygen levels and a potential increase in levels of contamination in the water column, a decrease in diversity and abundance of benthic and epibenthic organisms in the dredged area, increased energy consumption, potential petroleum-derived fuels and lubricant spills; and increased noise. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC 25.05.794). Although not significant, these impacts are adverse and, in some cases, mitigation may be warranted.

The applicant's SEPA Checklist and Biological Evaluation, discloses that the proposed construction work will take place in the waters of the Lake Washington Ship Canal. Because the proposed work is taking place in the water, there exists the potential for debris and other deleterious material to enter the water during this work. Best management practices (BMPs) should be employed to decrease the probability of debris or other deleterious material from entering the water during the proposed work. A boom should be deployed around the construction area to contain any debris that enters the water during the dredging activity and associated work. At a minimum the floating debris that enters the water during construction should be collected twice per day. This material should be contained on site and then disposed of at the appropriate upland facility.

Construction impacts to the Lake Washington Ship Canal environment will be mitigated by construction company procedures and restrictions on construction times. Specifically, the dredging activity will occur from a floating barge and the dredged material will be stored on the barge until it is off-loaded to the adjacent land. The barge will not ground during the proposed work and the dredged material is proposed to be reused by Lakeside Industries. If there is material that Lakeside Industries cannot use this material will be disposed of an appropriate upland facility. Construction activity will be restricted to October 1 through April 15th as per the US Army Corps of Engineers Chinook Salmon and Bull Trout Work Windows for the Lake Washington Ship Canal System.

Construction material and equipment pose some potential danger of water contamination. The contamination could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to commencing construction an emergency containment plan and procedures be developed and all necessary equipment be stocked on the site. It is also warranted to require the use of BMPs to minimize the potential for deleterious material from entering the Lake Washington Ship Canal during construction and to minimize the negative impacts of the construction activities.

Water Quality

The project is conditioned so that the owner(s), builder(s), or responsible party(s) shall prevent debris from entering the water during dredging operations. Materials and construction methods shall be used which prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after construction. This condition is imposed pursuant to SEPA authority to mitigate construction impact on water quality (SMC 25.05 675 S).

No further SEPA conditioning of potential short-term impacts appears to be warranted.

Long-Term Impacts

Plants and Animals

Assessing environmental impacts of the project for purposes of possible SEPA conditioning requires comparison to the existing on-site conditions. Currently the depth of the water at the site varies from 9 to 10 feet and the proposal is to deepen the area to a depth of 12-ft below ordinary low water.

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit the Lake Washington Ship Canal including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

The project site serves as a migration corridor for juvenile Chinook salmon from the Cedar River and other water bodies in Water Resource Inventory Area 8. Additionally, predators of juvenile chinook are known to inhabit areas under pier structures and may use these areas as cover while preying on juvenile chinook. Small mouth bass, an introduced predator of juvenile chinook, also use the base of pilings under pier structures as nesting sites.

Clearly identified impacts include disturbance of the nearshore habitat, disruption by deepening habitat of a threatened species and removal of benthic organisms. Measures proposed by the project

proponent to mitigate impacts to the ESA listed species and other aquatic wildlife include the planting of native vegetation along shoreline in the street end that is northerly and adjacent to the project site. The applicant leases this street end from SDOT. This measure will provide terrestrial input in the form of insects and detritus and will mitigate for the lost benthic life caused by the dredging activity.

Long-term or use related impacts are also anticipated from the proposal and include: the continued removal of benthic material through dredging, continued presence of piling in the water and the disruption of the nearshore Ship Canal environment due to continued human activity in the shoreline environment. These impacts will lead to continued adverse impacts on fish habitat and fish migration routes. In water structures in the form of piling reduces the amount and quality of natural habitat of juvenile chinook salmon and provides habitat for introduced predator species of juvenile chinook.

Dredging at this site first occurred in 1977 and subsequently occurred in 1978, 1981, 1984, 1987 and 2000. It is anticipated the dredging will need to occur in the future because of the nature the activity that occurs on site and the continued spillage of sand and gravel during the off-loading of material at the site. Because of this repeated dredging disturbs the substrate and the aquatic invertebrate community living in and on the substrate, reducing the amount of spillage that occurs during the off-loading of material was investigated. The sand and gravel is spilled into the water during the transfer of material from barges to the land. Spillage occurs when the material being transferred misses the hopper or spills over the top of the hopper. In order to reduce the occurrence of spillage over the hopper during off-loading of material the applicant will modify the hopper by increasing the height and the width of the wing-walls so that the loader has a much larger area to deposit material.

Environmental Health

SEPA Policy 25.05.675-F provides the authority to mitigate impacts resulting from toxic or hazardous materials and transmissions. The location of the subject project is in the waters of the Lake Washington Ship Canal. As noted earlier in this decision, there will be a spill prevention and control plan submitted before the issuance of the Master Use Permit. Additionally, it is not anticipated that the dredged material will be contaminated. Therefore the spill prevention and countermeasure plan will provide the appropriate mitigation to ensure against environmental health damages. Also, proper conditioning is warranted to ensure the spill prevention and control plan is implemented.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impacts upon the environment. An EIS is not required under RCW 43.21C.030(2)(c).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

CONDITIONS – SEPA AND SHORELINE

Conditions of Approval

The following conditions(s) to be enforced during dredging shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the Master Use Permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the dredging.

Prior to Issuance of Master Use Permit

1. A spill prevention and control plan shall be prepared and submitted to DPD.

During the Proposed Work

2. Care shall be taken by the owner(s), builder(s), or responsible party(s) to prevent debris from entering the water during dredging and to remove debris promptly if it does enter the water. Materials and dredging methods shall be used which prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after dredging. Spill prevention and response material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
3. A silt fence shall be placed around the perimeter of the dredging to reduce the extent of the turbidity that results from the dredging activity.
4. The silt fence will also serve as a containment boom and will be used to contain any material that falls into the water. Material that falls into the water shall be removed a minimum of once per day.
5. The on-shore hopper shall be retrofitted by increasing the height and width of the wing-walls to increase the area where the material is deposited resulting in less spillage of material.

6. A forty-five feet by sixteen feet area within the adjacent shoreline street end (NW 39th Street) shall be planted with native vegetation along the water's edge. This vegetation shall be maintained according to the maintenance and monitoring plan.
7. All dredged material shall be re-used at the project site if possible. If there is dredged material that cannot be used at the site this material shall be disposed of at an upland facility approved by the Environmental Protection Agency (EPA) and the Director of the Seattle/King County Department of Public Health, or any successor agency.

For the Life of the Project

8. The vegetation planted on the adjacent street end (NW 39th Street) shall be maintained for the life of the project.

Signature: _____ Date: July 1, 2004
Margaret Glowacki, Land Use Planning Analyst
Department of Planning and Development

MG:bg

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